

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
DAVID EVANS)
d.b.a. DAVID EVANS COMPANY,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHE No. 886

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$100 civil penalty assessed for failure to notify respondent and submit plans and obtain approval before altering an air contaminant source having come on regularly for formal hearing before Board members Chris Smith and Walt Woodward on the 4th day of September, 1975, at Seattle, Washington and appellant David Evans appearing pro se and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin with William A. Harrison, hearing examiner presiding and the Board having considered the sworn testimony, the exhibits, records and files herein and having

1 entered on the 30th day of September, 1975, its proposed Findings of
2 Fact, Conclusions of Law and Order, and the Board having served said
3 proposed Findings, Conclusions and Order upon all parties herein by
4 certified mail, return receipt requested and twenty days having elapsed
5 from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order dated the 30th day of
11 September, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington this 30th day of October, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 Chris Smith
17 CHRIS SMITH, Chairman

18 Walt Woodward
19 WALT WOODWARD, Member

1 CERTIFICATION OF MAILING

2 I, Dolories Osland, certify that I deposited in the United States
3 mail, copies of the foregoing document on the 30th day of
4 October, 1975, to each of the following-named parties,
5 at the last known post office addresses, with the proper postage affixed
6 to the respective envelopes:

7 Mr. David Evans
8 David Evans Company
9 P. O. Box 9053
Queen Anne Station
Seattle, Washington 98109

10 Mr. Keith D. McGoffin
11 Burkey, Marsico, Roval, McGoffin,
Turner and Mason
12 P. O. Box 5217
Tacoma, Washington 98405

13 Puget Sound Air Pollution
14 Control Agency
410 West Harrison Street
15 Seattle, Washington 98119

16 Dolories Osland
17 DOLORIES OSLAND, Clerk of the
18 POLLUTION CONTROL HEARINGS BOARD
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This is an appeal of a \$100 civil penalty assessed against appellant, David Evans, for alleged failure to notify respondent, Puget Sound Air Pollution Control Agency (PSAPCA), and submit plans and obtain respondent's approval before altering an air contaminant source. Such conduct would be in violation of respondent's Regulation I, Section 6.03. The matter came on for hearing before the Pollution Control Hearings Board (Chris Smith, Chairman, Walt Woodward, Member, and William A. Harrison, Hearing Examiner, presiding) convened in Seattle on September 4, 1975. Respondent elected a formal hearing.

EXHIBIT A

1 Appellant, David Evans, appeared pro se; respondent appeared by and
2 through its attorney, Keith D. McGoffin.

3 Witnesses were sworn and testified. Exhibits were admitted.
4 From testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I.

8 Respondent introduced into evidence its Regulation I without
9 objection from appellant.

10 II.

11 During and prior to May, 1975, the Federal Reserve Bank, 1015 Second
12 Avenue, Seattle, Washington, became concerned over emissions from a
13 certain incinerator, used in the disposal of currency and food stamps.

14 III.

15 The bank began negotiations with the appellant, David Evans, for a
16 solution to their emission difficulties. In a series of events not at
17 issue here, various solutions were suggested.

18 IV.

19 On or about May 17, 1975, an agent of the appellant, David Evans,
20 suggested to the bank that a wall strategically placed within the
21 incinerator might improve combustion and thereby cleanse emissions. The
22 bank and appellant, David Evans, agreed that an experiment should
23 be performed to test the theory. Appellant then stacked in the
24 incinerator, free of charge, 40 used fire bricks which, although
25 unmortared, formed a wall. No contractual agreement was ever condi-
26 tioned upon the success of this experiment. If it would work, the

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 40 used fire bricks would be removed, and a contract would have been
2 negotiated for the construction of a sturdier, permanent wall.

3 V.

4 Prior to insertion of these 40 used fire bricks into the incinerator,
5 appellant gave no notice, nor did he submit plans, nor did he obtain the
6 written approval of respondent, PSAPCA.

7 VI.

8 The 40 used fire bricks remained in place until May 19, 1975, at
9 which time respondent issued a Notice of Violation specifying a breach
10 of its Regulation I, Section 6.03, in that there had occurred "modifying
11 (of) an incinerator without approval to construct." An Order of \$100.00
12 Civil Penalty was issued by respondent on June 5, 1975.

13 VII.

14 The experiment involving the 40 bricks did not work. Because of
15 this, the bank removed and disposed of said bricks less than 48 hours
16 after they were installed.

17 VIII.

18 Any Conclusion of Law which should be deemed a Finding of Fact
19 is hereby adopted as such.

20 From these Findings, the Pollution Control Hearings Board comes
21 to these

22 CONCLUSIONS OF LAW

23 I.

24 Section 6.03 of respondent's Regulation I provides in part:

25 (a) No person shall construct, install or establish a new
26 air contaminant source, except those sources that are excluded
in Exhibit "A" of Section 5.03 of this Regulation unless a

27 FINDINGS OF FACT,
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1 "Notice of Construction and Application for Approval," on
2 forms prepared and furnished by the Agency, has been filed and
3 approved by the Agency in accordance with Sections 6.07(a) or
4 6.11. For purposes of this Article, alterations shall be
5 construed as construction, installation or establishment of a
6 new air contaminant source. . . .

7 The Board finds that the temporary piling of 40 used fire bricks in an
8 incinerator as was done here was not an "alteration" within the meaning
9 of Section 6.03. Therefore, the section does not apply.

10 II.

11 Appellant did not violate Section 6.03 of respondent's Regulation I
12 as described in Notice of Violation No. 10332. Therefore, Notice of
13 Civil Penalty No. 2097 should not have been issued.

14 III.

15 Any Finding of Fact recited herein which is deemed to be a
16 Conclusion of Law is adopted herewith as same.

17 Therefore, the Pollution Control Hearings Board issues this

18 ORDER

19 The \$100 civil penalty is vacated and the matter is hereby
20 dismissed.

21 DONE at Lacey, Washington this 30th day of September, 1975.

22 POLLUTION CONTROL HEARINGS BOARD

23 Chris Smith
24 CHRIS SMITH, Chairman

25 Walt Woodward
26 WALT WOODWARD, Member

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER